

**N.G., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

*Appearances:*

*Thomas R. Uliase, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

### Case Submitted on the Record

Before:

## ***JURISDICTION***

On October 25, 2018 appellant, through counsel, filed a timely appeal from a June 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the June 5, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish total disability for the period May 15 to September 18, 2016 causally related to her accepted January 25, 2013 employment injury; (2) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2017; and (3) whether appellant has met her burden of proof to establish continuing disability or residuals on and after April 20, 2017, causally related to the accepted January 25, 2013 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 25, 2013 appellant, then a 37-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 25, 2013 she strained her neck and back when she was involved in a motor vehicle accident while in the performance of duty. She stopped work on the date of injury. OWCP accepted appellant's claim for neck sprain. It paid continuation of pay (COP) until March 11, 2013 and paid wage-loss compensation on the supplemental rolls, effective March 12, 2013. On May 16, 2013 appellant returned to part-time light-duty work.<sup>5</sup>

Appellant received medical treatment from Dr. Scott Fried, an osteopath specializing in orthopedic hand surgery and pain management. In a report dated May 16, 2016, Dr. Fried related that appellant's neck symptoms had been "flared" for the past two weeks and had spread to the shoulders. Upon examination of appellant's cervical spine, he reported left-sided neck pain with lateral bending and limited flexion. Dr. Fried also noted severe spasm and tenderness across appellant's left trapezius and tightness with some tenderness across the right trapezius. Neurological examination demonstrated positive Phalen's, Tinel's, and compression testing. Dr. Fried diagnosed cervical strain and sprain, disc bulges at C4-5, C5-6, and C6-7 with radiculopathy, and right shoulder rotator cuff strain and sprain. He completed a disability certificate and noted: "[Appellant] is currently flared. We are bringing her out of work to get things calmed down."

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<sup>4</sup> Docket No. 15-0567 (issued April 27, 2015). In its previous decision, the Board reversed an October 7, 2014 hearing decision which affirmed the termination of appellant's wage-loss compensation and medical benefits, effective January 13, 2014, based on the October 9, 2013 report of Dr. Stuart Trager, an OWCP impartial medical examiner and Board-certified orthopedic surgeon. The Board found that Dr. Trager's report was insufficiently rationalized to represent the special weight of the medical evidence. OWCP reinstated appellant's medical coverage, but because she was not on the periodic rolls for wage-loss compensation, it did not pay wage-loss compensation benefits until she submitted CA-7 forms in October 2015.

<sup>5</sup> In a duty status report (Form CA-7) dated April 1, 2013, Dr. Gautam Kothari, Board-certified in physical medicine and rehabilitation, authorized appellant to return to part-time modified-duty work with restrictions of no lifting, pushing, or pulling more than 20 pounds.

On May 26, 2016 OWCP referred appellant, along with an updated statement of accepted facts (SOAF),<sup>6</sup> a set of questions, and the medical record to Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, for a second opinion examination regarding the status of her January 25, 2013 employment injury.

Dr. Fried continued to treat appellant and provided medical reports dated May 26 and June 9, 2016. He related that her symptoms continued despite rest from being off work and home modalities. Dr. Fried provided examination findings and noted diagnoses of cervical strain and sprain, disc bulges at C4-5, C5-6, and C6-7 with radiculopathy, and right shoulder rotator cuff strain and sprain. He completed disability certificates which indicated that appellant “remained currently flared” and should remain off work until further notice.

Appellant began to receive medical treatment from Dr. Steven J. Valentino, an osteopath specializing in orthopedic surgery. In a report dated June 8, 2016, Dr. Valentino related appellant’s complaints of bilateral neck pain localized C4 through C7. He indicated that appellant was working in a modified capacity, but had a “flare up of symptoms” and had been off work since May 2016. Dr. Valentino reported examination findings of limited range of motion of appellant’s cervical spine and significant spasm upon palpation. He diagnosed other cervical disc degeneration, mid-cervical region, cervical pain, cervical strain, and pain of cervical facet joint.

On June 20, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability for the period May 14 to 27, 2016. On the time analysis form (Form CA-7a), she requested wage-loss compensation for total disability beginning May 16, 2016. Appellant indicated that her reason for using leave was “Restricted Duty.” She filed additional claims for wage-loss compensation (Forms CA-7) for the period May 28 through September 16, 2016.

In a June 27, 2016 development letter, OWCP advised appellant of the type of evidence needed to establish her wage-loss compensation claim. It afforded her 30 days to submit the necessary evidence.

In a June 29, 2016 second opinion report, Dr. Didizian described appellant’s history of injury and detailed the findings of the physical examination. He reported that palpation of appellant’s trapezii showed no fibrosis or myofascial defects. Spurling’s test was negative. Dr. Didizian opined that there was no evidence of an ongoing cervical sprain or other additional conditions causally related to the January 25, 2013 employment injury. He authorized appellant to return to regular duty.

In reports dated July 11 and August 16, 2016, Dr. Fried related appellant’s complaints of continued neck symptoms. He detailed findings on examination of localized pain and continued spasms of appellant’s neck. Dr. Fried diagnosed cervical strain and sprain, disc bulges at C4-5, C5-6, and C6-7 with radiculopathy, right shoulder rotator cuff strain and sprain, cervical radiculopathy, and bilateral radial neuropathy. He reported that appellant was still “symptomatic

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<sup>6</sup> The updated SOAF noted that appellant’s current claim was accepted for neck sprain. It also related that she had a previous claim under OWCP File No. xxxxxx002, which was accepted for right rotator cuff tendinitis and right bicipital tenosynovitis. The SOAF also indicated that appellant had a subsequent claim, filed on January 20, 2015, under OWCP File No. xxxxxx829, which was accepted for lower back sprain.

and limited and things are still flared.” Dr. Fried explained that he wanted to wait to return appellant to work until she was more stable.

Appellant submitted additional reports by Dr. Valentino. In reports dated August 17 and September 21, 2016, Dr. Valentino related appellant’s complaints of bilateral neck pain localized C4 through C7. Examination of appellant’s cervical spine showed significantly limited range of motion and spasm, facet synovitis, and effusion upon palpation. Dr. Valentino diagnosed other cervical disc degeneration, cervical pain, cervical strain, and pain of cervical facet joint.

On September 13, 2016 appellant underwent a work capacity evaluation test by Albert Wong, a registered occupational therapist, who indicated that appellant could perform part-time sedentary work with light-duty limitations.

On September 14, 2016 OWCP determined that a conflict in medical opinion existed between Dr. Didizian, OWCP’s referral physician, and Drs. Valentino and Fried, appellant’s treating physicians, regarding whether the January 25, 2013 employment injury aggravated a preexisting condition resulting in cervical radiculopathy, whether appellant required continued treatment for cervical radiculopathy due to ongoing residuals, and whether she had ongoing total or partial disability due to her cervical condition. It referred appellant to Dr. William H. Simon, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict.

In a November 7, 2016 report, Dr. Simon noted his review of appellant’s medical records, including the SOAF, and described the January 25, 2013 employment injury. He related appellant’s current complaints of pain in the back of her neck and head radiating to her left shoulder. Upon examination of appellant’s cervical spine, Dr. Simon observed no tenderness in the midline from the cervical spine to the lumbosacral spine. He noted tenderness upon palpation of the left trapezius muscle and some mild firmness. Range of motion of appellant’s cervical spine showed 45 degrees to the right and left with some pain in the left shoulder, lateral bending to 30 degrees to the right and left, extension to 30 degrees, and flexion to 45 degrees. Dr. Simon diagnosed degenerative disc disease and degenerative joint disease of the cervical spine and mild frozen left shoulder (adhesive capsulitis). He opined that the medical evidence in the record did not support a diagnosis of cervical radiculopathy. Dr. Simon explained that none of the multiple electromyography (EMG) studies showed evidence of cervical radiculopathy<sup>7</sup> and that appellant’s neurologic examination was normal.

Dr. Simon opined that appellant’s accepted cervical sprain condition had completely resolved, but that she continued to suffer effects of her underlying degenerative joint disease of the cervical spine. He indicated that a cervical sprain was a soft tissue injury, which would heal in a matter of a few weeks to several months with rest and mild rehabilitation. Dr. Simon explained that appellant needed additional time for rehabilitation because of the underlying preexistent cervical degenerative disc condition and concluded that by six months (July 2013), she would have fully rehabilitated from her cervical sprain injury. He reported that she was no longer disabled due to the January 25, 2013 employment injury because the cervical sprain injury had resolved.

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<sup>7</sup> A December 2, 2013 EMG and nerve conduction velocity (NCV) study by Dr. Joseph Moeller, a Board-certified neurologist, showed normal motor and sensory studies of the bilateral median, radial, and ulnar nerves. Dr. Moeller indicated that he did not find electrophysiological evidence of a neuropathy, myopathy, plexopathy, or radiculopathy affecting the upper extremities.

Dr. Simon further noted that appellant continued to suffer from her preexisting degenerative disc and joint disease and would require further treatment. He indicated that appellant could likely return to light-duty work after additional treatment for her “flare-up” of her underlying cervical degenerative disc disease.

On January 10, 2017 OWCP proposed to terminate appellant’s wage-loss compensation and medical benefits, finding that she no longer had residuals or disability due to her January 25, 2013 employment injury. It found that the special weight of medical evidence rested with Dr. Simon’s November 7, 2016 report. OWCP afforded appellant 30 days to submit additional evidence and argument if she disagreed with the proposed termination.

By separate decision of even date, OWCP denied wage-loss compensation for the period May 30, 2015 through September 18, 2016. It found that the medical evidence submitted was insufficient to establish that appellant’s inability to work during the claimed period was causally related her accepted January 25, 2013 employment injury.

On January 17, 2017 appellant, through counsel, requested a hearing of the January 10, 2017 decision denying wage-loss compensation, which was held on May 23, 2017.

In a letter dated January 19, 2017, appellant, through counsel, noted his disagreement with OWCP’s January 10, 2017 proposed termination letter. He alleged that Dr. Simon had not provided sufficient medical reasoning for his conclusion that appellant was able to work. Counsel also asserted that Dr. Simon’s impartial medical examination report demonstrated that appellant’s claim should be expanded to include the additional condition of aggravation of degenerative disease in the cervical spine.

Appellant continued to receive additional medical treatment by Dr. Fried. In reports and disability certificates dated February 23 and April 4, 2017, he provided examination findings and diagnosed cervical strain, disc bulges at C4-5, C5-6, and C6-7, cervical radiculopathy, and left radial and median neuropathy. Dr. Fried opined that appellant remained limited and could not return to work.

In a report dated March 27, 2017, Dr. Fried discussed the physical requirements of appellant’s work duties. He explained that the duties of outward and overhead reaching had been problematic for her and continued to exacerbate and aggravate her symptoms. Dr. Fried opined that in the January 25, 2013 employment injury appellant sustained a cervical strain and sprain with evidence of disc bulging at C4-7 discs, significant nerve root irritation, and evidence of a C5-T1 radiculopathy bilaterally, left greater than right. He opined that appellant was capable of working with modified activity of no regular reaching, pulling, pushing, overhead reaching, casing, regular head and neck posturing, and repetitive activity.

By decision dated April 20, 2017, OWCP finalized the termination in appellant’s wage-loss compensation benefits, effective that date. It found that the special weight of the medical opinion evidence rested with Dr. Simon, the impartial medical examiner, who concluded in a November 7, 2016 report that appellant ceased to have residuals or disability due to her accepted January 25, 2013 employment injury.

On April 26, 2017 appellant, through counsel, requested a hearing before an OWCP hearing representative, which was held on July 19, 2017.

Appellant subsequently submitted a June 19, 2017 letter by Dr. Valentino. Dr. Valentino reported physical examination findings of decreased range of motion of appellant's cervical spine with significant spasm. He reported that appellant continued to suffer residuals of her work-related injury, which included a cervical strain and sprain with facet-mediated pain, aggravation of multilevel disc protrusions, and aggravation of multilevel degenerative disc disease with cervical radiculitis.

By decision dated August 9, 2017, an OWCP hearing representative set aside and remanded the January 10, 2017 decision regarding appellant's claim for wage-loss compensation. He found that the additional medical reports by Dr. Fried and Dr. Valentino, submitted after Dr. Simon's November 7, 2016 impartial medical report, were sufficiently rationalized to require further development of the medical evidence in order to determine whether the January 25, 2013 employment incident caused or aggravated additional medical conditions affecting appellant's cervical spine and whether these injuries contributed in any way to appellant's partial or total disability from work during the period May 30, 2015 through September 18, 2016.

By decision dated August 18, 2017, an OWCP hearing representative affirmed in part and modified in part the April 20, 2017 termination decision. He found that OWCP properly accorded special weight to Dr. Simon's opinion and, accordingly, that OWCP had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits. The hearing representative also determined, however, that Dr. Simon should review the additional reports by Drs. Fried and Valentino and provide a supplemental opinion on whether the January 25, 2013 employment injury -- the motor vehicle accident -- had aggravated a preexisting cervical condition (degenerative disc disease and disc protrusions) resulting in cervical radiculopathy and whether the cervical radiculopathy was ongoing, resulting in partial or total disability.

In a supplemental report dated October 5, 2017, Dr. Simon noted that he reviewed Dr. Fried's March 27, 2017 and Dr. Valentino's June 19, 2017 reports. He indicated that Dr. Valentino had not diagnosed a condition of aggravation of underlying degenerative disc disease or degenerative joint disease in his September 21, 2016 report. Dr. Simon also related that despite Dr. Fried's assessment of cervical radiculopathy, the diagnostic and neurological examinations in the record were read as "normal" and showed no evidence of cervical radiculopathy. He noted that physical examination showed that appellant could walk well on her toes and with normal heel-toe-gait. Dr. Simon diagnosed frozen shoulder and degenerative joint disease of the cervical spine.

In response to OWCP's question, Dr. Simon concluded that appellant had not sustained an aggravation of her underlying degenerative joint or disc disease as a result of the January 25, 2013 employment incident. He explained that the condition of degenerative joint disease and degenerative disc disease was progressive, and would worsen with the passage of time. Dr. Simon noted that appellant's present condition was compatible with a worsening of her underlying degenerative disc disease over the time period that she has been treated for her cervical sprain. He concluded that appellant no longer suffered from the results of the January 25, 2013 employment injury, which produced a cervical strain and sprain, but that she still suffered from degenerative joint and disc disease of her cervical spine, which were preexisting to the automobile accident, and had progressed with time. Regarding appellant's disability from work during the period May 30, 2015 through September 18, 2016, Dr. Simon reported that he did not have the opportunity to evaluate appellant during that period of time, but he understood that she was out of work during

that time due to a “flare-up” of her symptoms. He opined that this “flare-up” would not be due to her work-related January 25, 2013 employment injury.

By decision dated October 23, 2017, OWCP affirmed the April 20, 2017 termination decision. It found that the special weight of medical evidence rested with Dr. Simon’s November 7, 2016 and October 5, 2017 impartial medical reports, which established that appellant no longer had residuals or disability causally related to the January 25, 2013 employment injury.

By separate decision of even date, OWCP issued a *de novo* decision denying appellant’s claim for wage-loss compensation for the period May 30, 2015 through September 18, 2016 based on Dr. Simon’s report.

By letters dated October 30 and November 2, 2017, appellant, through counsel, appealed both decisions and requested a hearing before an OWCP hearing representative. A hearing was held on March 28, 2018 to address both decisions.

By decision dated June 5, 2018, an OWCP hearing representative affirmed the October 23, 2017 decision regarding appellant’s claim for compensation as modified. She found that appellant was entitled to wage-loss compensation for partial disability until May 14, 2016.<sup>8</sup> The hearing representative also determined that appellant had not submitted sufficient medical evidence to establish that she was entitled to wage-loss compensation for the period May 14 through September 18, 2016. She also affirmed the October 23, 2017 decision upholding the termination of appellant’s wage-loss compensation and medical benefits effective April 20, 2017.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.<sup>9</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>10</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>11</sup>

Under FECA the term “disability” means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment

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<sup>8</sup> The hearing representative noted that appellant had been receiving wage-loss compensation for partial disability up to May 30, 2015 and the record did not establish that there was any change in appellant’s medical condition or work restrictions. Accordingly, she determined that appellant was entitled to the same compensation that she had been receiving before OWCP modified her compensation. The hearing representative remanded the case as to the partial wage-loss compensation claim for the period May 30, 2015 to May 14, 2016. Thus that period is not presently before the Board on appeal.

<sup>9</sup> See *D.W.*, Docket No. 18-0644 (issued November 15, 2018); *Amelia S. Jefferson*, 57 ECAB 183 (2005).

<sup>10</sup> *Id.*

<sup>11</sup> See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>12</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>13</sup> Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is causal relationship between the claimant's claimed disability and the accepted employment injury. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the claimed disability and the accepted employment injury.<sup>14</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish total disability for the period May 15 to September 18, 2016 causally related to her accepted January 25, 2013 employment injury.

The medical evidence relevant to the claimed period of disability includes various reports by Dr. Fried. In a May 16, 2016 report, Dr. Fried related that appellant's neck symptoms had been "flared" for the past two weeks and noted that she had called off work. He reported examination findings of left-sided neck pain with lateral bending and limited flexion and positive Phalen's, Tinel's, and compression testing. Dr. Fried diagnosed cervical strain and sprain, disc bulges at C4-5, C5-6, and C6-7 with radiculopathy, and right shoulder rotator cuff strain and sprain. He explained: "[Appellant] is currently flared. We are bringing her off work to get things calmed down." Dr. Fried continued to treat appellant and in medical reports and disability certificates dated May 26 to August 16, 2016, he related that appellant's symptoms continued despite rest from being out of work and home modalities. He reported that appellant should remain off work because appellant remained "symptomatic and flared."

Although Dr. Fried opined that appellant could no longer work, his opinion does not support a spontaneous recurrence of appellant's neck sprain injury. While he mentioned that appellant's symptoms had "flared," he did not provide medical rationale explaining how appellant's accepted neck sprain had worsened to the extent that she was unable to work part-time modified-duty work beginning May 15, 2016.<sup>16</sup> Instead, Dr. Fried noted additional diagnoses of

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<sup>12</sup> *Id.*

<sup>13</sup> *R.H.*, Docket No. 18-1382 (issued February 14, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>14</sup> *See C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>15</sup> *See B.K.*, Docket No. 18-0386 (issued September 14, 2018).

<sup>16</sup> *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.M.*, Docket No. 16-0541 (issued April 27, 2010).



C4-5, C5-6, and C6-7 with radiculopathy and right shoulder rotator cuff strain and sprain, which are not accepted conditions. As he failed to attribute disability to the accepted condition of neck sprain, his reports are insufficient to establish that appellant was totally disabled from work for the period May 16 to September 18, 2016.<sup>17</sup>

Similarly, Dr. Valentino's reports dated June 8 to September 21, 2016 are insufficient to meet appellant's burden of proof. While he indicated that appellant had a "flare up of symptoms," he did not adequately explain why she was unable to work as a result of her accepted neck sprain injury.<sup>18</sup>

It is appellant's burden of proof to establish that she was disabled from work on the specific dates and during the claimed period due to her January 25, 2013 employment injury.<sup>19</sup> The reports of appellant's treating physicians did not provide a rationalized medical opinion substantiating that she was disabled from work during the claimed period May 15 to September 18, 2016 due to her accepted January 25, 2013 neck sprain injury. Accordingly, the medical evidence submitted is insufficient to meet appellant's burden of proof.<sup>20</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of compensation benefits.<sup>21</sup> OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>22</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>23</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>24</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>25</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall

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<sup>17</sup> See *E.W.*, Docket No. 17-1988 (issued January 28, 2019); see also *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

<sup>18</sup> See *T.G.*, Docket No. 18-1064 (issued April 26, 2019).

<sup>19</sup> *Supra* note 11.

<sup>20</sup> *S.I.*, Docket No. 18-1582 (issued June 20, 2019); *Alfredo Rodriguez*, 47 ECAB 437 (1996).

<sup>21</sup> *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>22</sup> *A.G.*, Docket No. 18-0749 (issued November 7, 2018); see also *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

<sup>23</sup> *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>24</sup> *L.W.*, Docket No. 18-1372 (issued February 27, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>25</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.<sup>26</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>27</sup> When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>28</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2017 because she no longer had residuals or disability causally related to her January 25, 2013 employment injury subsequent to that date.

OWCP determined that a conflict in medical evidence existed between Drs. Fried and Valentino, appellant's treating physician who reported that she could not work due to a "flare-up" of her work-related injuries, and Dr. Didizian, an OWCP second opinion examiner, who found that appellant no longer had residuals or disability causally related to her January 25, 2013 employment injury. The Board finds, therefore, that OWCP properly referred appellant to Dr. Simon for an impartial medical examination in order to resolve the conflict.

In a November 7, 2016 report, Dr. Simon provided a detailed review of appellant's medical records and noted that the EMG studies were normal. Upon examination of appellant's cervical spine, he observed tenderness upon palpation of the left trapezius muscle and some mild firmness. Neurological examination of appellant's bilateral upper extremities were negative and sensation was intact. Dr. Simon diagnosed degenerative disc disease, degenerative joint disease of the cervical spine, and mild frozen left shoulder (adhesive capsulitis). He opined that appellant's accepted cervical sprain condition had completely resolved. Dr. Simon explained that a cervical sprain was a soft tissue injury, which would heal in a matter of a few weeks to several months. He reported that appellant's cervical sprain injury had resolved and that she was no longer disabled due to the January 25, 2013 employment injury. Dr. Simon further noted that appellant continued to suffer from her preexisting degenerative disc and joint disease and would require further treatment.

The Board finds that Dr. Simon provided a comprehensive, well-rationalized opinion in which he found that all residuals of appellant's accepted neck sprain injury had resolved and that she did not have any disability due to her January 25, 2013 employment injury. Dr. Simon reported that appellant's current symptoms were a result of her preexisting degenerative disc and that she

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<sup>26</sup> 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

<sup>27</sup> 20 C.F.R. § 10.321.

<sup>28</sup> *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

could return to limited duty after she recovered from her “flare-up” of her preexisting cervical condition.<sup>29</sup>

The medical evidence appellant subsequently submitted is insufficient to overcome the special weight accorded to Dr. Simon. Dr. Fried continued to provide reports and disability certificates dated February 23 and April 4, 2017, in which he diagnosed cervical strain, disc bulges at C4-5, C5-6, and C6-7, cervical radiculopathy, and left radial and median neuropathy and opined that appellant could not return to work. The Board has found that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.<sup>30</sup> Likewise, Dr. Valentino’s June 19, 2017 report also fails to overcome the special weight accorded Dr. Simon as Dr. Valentino was on one side of the medical conflict.<sup>31</sup>

The Board, therefore, finds that OWCP properly terminated appellant’s wage-loss compensation and medical benefits, effective April 20, 2017.

### **LEGAL PRECEDENT -- ISSUE 3**

Once OWCP properly terminate wage-loss compensation and medical benefits, the burden shifts to the claimant to establish continuing disability or residuals, after that date, causally related to his or her accepted injury.<sup>32</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, a claimant must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>33</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>34</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals, on or after April 20, 2017, causally related to her accepted January 25, 2013 employment injury.

Subsequent to the termination of wage-loss compensation and medical benefits OWCP obtained a supplemental report of Dr. Simon. In a supplemental report dated October 5, 2017, Dr. Simon opined that appellant no longer suffered from residuals of the January 25, 2013 employment injury, which produced a cervical strain and sprain, but that she still suffered from degenerative joint and disc disease of her cervical spine, which were preexisting and had

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<sup>29</sup> See *D.M.*, Docket No. 17-1052 (issued January 24, 2019); *D.G.*, Docket No. 17-0608 (issued March 19, 2018).

<sup>30</sup> *A.R.*, Docket No. 18-0632 (issued October 19, 2018); *I.J.*, 59 ECAB 408 (2008); *Barbara Warren*, 51 ECAB 413 (2000).

<sup>31</sup> *Id.*

<sup>32</sup> See *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *C.S.*, Docket No. 18-0952 (issued October 23, 2018); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>33</sup> *Id.*

<sup>34</sup> See *C.S.*, *supra* note 32; *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, *supra* note 13.

progressed with time. The Board finds that his supplemental report was based on a proper factual and medical history and provided sufficient medical rationale to be accorded the special weight of the medical evidence on the issue of continuing residuals or disability.

Appellant submitted a June 19, 2017 letter by Dr. Valentino. Dr. Valentino reported physical examination findings of decreased range of motion of appellant's cervical spine with significant spasm. He reported that appellant continued to suffer residuals of her work-related injury, which included a cervical strain and sprain with facet-mediated pain, aggravation of multilevel disc protrusions, and aggravation of multilevel degenerative disc disease with cervical radiculitis. The Board finds that this report of Dr. Valentino is insufficiently rationalized to overcome the special weight accorded to Dr. Simon.

The Board therefore finds that appellant has not met her burden of proof to establish continuing disability or residuals following the termination of her wage-loss compensation and medical benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established total disability for the period May 15 to September 18, 2016 causally related to her accepted January 25, 2013 employment injury. The Board also finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective April 20, 2017, as she no longer had residuals or disability due to her January 25, 2013 employment injury. The Board also finds that appellant has not met her burden of proof to establish continuing disability or residuals, on or after April 20, 2017, causally related to her accepted January 25, 2013 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board